

**STORAGE NAME:** h1209.jo.doc  
**DATE:** February 11, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
JUDICIAL OVERSIGHT  
ANALYSIS**

**BILL #:** HB 1209  
**RELATING TO:** Crime Victims' Rights  
**SPONSOR(S):** Representatives Gardiner and Needelman  
**TIED BILL(S):** none

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) JUDICIAL OVERSIGHT
  - (2) CRIME PREVENTION, CORRECTIONS & SAFETY
  - (3) COUNCIL FOR SMARTER GOVERNMENT
  - (4)
  - (5)
- 

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

Crime victims have a number of rights in Florida, provided both by statute and in the state constitution. This bill requires a court conducting arraignment, sentencing or a case management hearing to announce a specific advisement, provided in this bill.

There are constitutional and other concerns regarding this bill. See Section V. Comments herein.

This bill appears to have a minimal fiscal impact on state government. This bill does not appear to have a fiscal impact on local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |  |   |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain: This bill requires courts to make a new announcement prior to many criminal proceedings.

B. PRESENT SITUATION:

In general, art. I, s. 16(b), Fla. Const., provides for the rights of crime victims. It provides:

Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent these rights do not interfere with the constitutional rights of the accused.

Additionally, crime victims have a number of statutory rights. These include rights to:

- receive advance notification of judicial proceedings, when possible;<sup>1</sup>
- receive prompt notice of scheduling changes with respect to any required appearance by the victim;<sup>2</sup>
- seek crimes compensation from the state,<sup>3</sup> and/or restitution from the defendant;<sup>4</sup>
- consult with the state attorney regarding disposition of felony cases "involving physical or emotional injury or trauma";<sup>5</sup>
- give relevant oral or written victim-impact testimony at sentencing;<sup>6</sup> and
- "such other assistance, such as transportation, parking, separate pretrial waiting areas, and translator services in attending court, as is practicable."<sup>7</sup>

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<sup>1</sup> See s. 960.001(1)(e), F.S.

<sup>2</sup> See s. 960.001(1)(d), F.S.

<sup>3</sup> See ss. 960.01-960.28, F.S.

<sup>4</sup> See s. 775.089, F.S.

<sup>5</sup> Section 960.001(1)(g), F.S.

<sup>6</sup> See s. 921.143(1), F.S.

<sup>7</sup> Section 960.001(1)(n), F.S.

Finally, a crime victim must be given "a victim's rights information card or brochure containing essential information concerning the rights of a victim and services available to a victim as required by state law."<sup>8</sup>

**C. EFFECT OF PROPOSED CHANGES:**

This bill contains legislative findings that crime victims must be advised of their rights under art I, s. 16, Fla. Const., in order to effectively understand and exercise those rights. This bill further finds that victims must be advised of those rights in order to promote law enforcement that considers the rights of victims.

This bill requires a court conducting arraignment, sentencing or case management to announce a specific advisement, to crime victims of their rights. This advisement also informs victims that they may obtain further information about their rights from the state attorney's office or the Clerk of Court. The advisement reads:

If you are the victim of a crime with a case pending before this court, you are advised that you have the right:

(1) To be informed.

(2) To be present.

(3) To be heard, when relevant, at all crucial stages of criminal proceedings to the extent that these rights do not interfere with the constitutional rights of the accused.

(4) To receive advance notification, when possible, of judicial proceedings and notification of scheduling changes, pursuant to section 960.001, Florida Statutes.

(5) To seek crimes compensation and restitution.

(6) To consult with the state attorney's office in certain felony cases regarding the disposition of the case.

(7) To make an oral or written victim-impact statement at the time of sentencing of a defendant.

For further information regarding additional rights afforded to victims of crime, you may contact the state attorney's office or obtain a listing of your rights from the Clerk of Court.

**D. SECTION-BY-SECTION ANALYSIS:**

None.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

This bill requires courts to expend time making the required advisement. This requirement will increase judicial workload and correspondingly decrease judicial throughput. The fiscal effect is unknown.

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<sup>8</sup> Section 960.001(1)(o), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Article V., s. 2(a), Fla. Const., provides that the "Supreme Court shall adopt rules for the practice and procedure in all courts." This bill's imposition of a specific advisement to be announced by courts may raise concerns under this provision.

Florida courts protect their rulemaking power by striking down laws that conflict with their rules. For example, in 1976, the Florida Supreme Court ruled unconstitutional a statute regarding the state mental hospital because it was in conflict with a previously passed criminal rule of procedure regarding persons found not guilty by reason of insanity.<sup>9</sup> In 1991, the Court ruled that a statute requiring mandatory severance of a mortgage foreclosure trial from a trial on any other counterclaims was unconstitutional because it conflicted with an existing rule of civil procedure.<sup>10</sup>

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<sup>9</sup> See *In re Connors*, 332 So.2d 336 (Fla. 1976).

<sup>10</sup> See *Haven Federal Savings & Loan Ass'n v. Kirian*, 579 So.2d 730 (Fla. 1991).

Essentially, the rule is that substance is legislative and procedure is judicial. In practice, determining the difference is not simple or clear. In 1973, Justice Adkins described the difference between substance and procedure in this way:

The entire area of substance and procedure may be described as a "twilight zone" and a statute or rule will be characterized as substantive or procedural according to the nature of the problem for which a characterization must be made. From extensive research, I have gleaned the following general tests as to what may be encompassed by the term "practice and procedure." Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. "Practice and procedure" may be described as the machinery of the judicial process as opposed to the product thereof. Examination of many authorities leads me to conclude that substantive law includes those rules and principles which fix and declare the primary rights of individuals as respects their persons and their property. As to the term "procedure," I conceive it to include the administration of the remedies available in cases of invasion of primary rights of individuals. The term "rules of practice and procedure" includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution.<sup>11</sup>

This "twilight zone" remains to this day, and causes in the analysis of many enactments a difficult determination of whether a matter is procedural or substantive.

It appears that the closer to criminal law one gets, the more likely it is that the courts will treat something as substantive rather than procedural. For example, in the administrative context of worker's compensation, Florida courts have consistently held that burdens of proof are procedural rather than substantive,<sup>12</sup> but at the opposite extreme, in the criminal context, the Supreme Court of the United States has held that the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires proof of a defendant's guilt beyond a reasonable doubt; moreover, this requirement applies to juvenile proceedings even if they are technically "civil."<sup>13</sup> To further illustrate this, the Supreme Court of Florida has held that criminal statutes of limitations are substantive,<sup>14</sup> but strongly suggested that civil statutes of limitations are procedural.<sup>15</sup> It is therefore possible that a court might determine this bill's required advisement to be either substantive or procedural.

However, even if a court held that the advisement is procedural, that court might not strike down the advisement. Despite treating it as procedural, the Supreme Court of Florida in *Kalway v. Singletary*<sup>16</sup> nonetheless upheld a thirty-day statute of limitations for the filing of an action challenging a prisoner disciplinary proceeding. In discussing the separation of powers issue, the Court said:

As a practical matter, the Court on occasion has deferred to the expertise of the legislature in implementing its rules of procedure. See, e.g., *Amendment to Florida Rule of Juvenile Procedure 8.100(a)*, 667 So.2d 195, 195 (Fla.1996) (noting that the need for juvenile detention shall be made "according to the criteria provided by law" and explaining that these "include those requirements set out in section 39.042, Florida Statutes (1995)"); *In re Family Law Rules of Procedure*, 663 So.2d 1049, 1086 (Fla.1995) (setting forth amended rule 12.740, which

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<sup>11</sup> *In re Florida Rules of Criminal Procedure*, 272 So.2d 65, 66 (Fla. 1973).

<sup>12</sup> See *Sullivan v. Mayo*, 121 So.2d 424 (Fla. 1960); 57 FLA. JUR. 2d WORKERS' COMPENSATION § 12 and authorities cited therein.

<sup>13</sup> See *In re Winship*, 397 U.S. 358 (1970).

<sup>14</sup> See *Rubin v. State*, 390 So.2d 322 (Fla. 1980).

<sup>15</sup> See *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000); *State ex rel. Butterworth v. Kenny*, 714 So.2d 404 (Fla. 1998).

<sup>16</sup> 708 So.2d 267 (Fla. 1998).

provides that all contested family matters may be referred to mediation, "[e]xcept as provided by law"). The setting of an interim time frame for challenging the Department's disciplinary action following the exhaustion of intra-departmental proceedings is a technical matter not outside the purview of the legislature. We do not view such action as an intrusion on this Court's jurisdiction over the practice and procedure in Florida courts.<sup>17</sup>

Given this bill's express legislative findings of public policy served by the advisement, it is possible that a court that treated the advisement requirement as procedural would still defer to the Legislature. It is also possible that such a court would instead strike down the required advisement as encroaching on the judiciary's rulemaking power.

**B. RULE-MAKING AUTHORITY:**

None.

**C. OTHER COMMENTS:**

A court's failure to provide the advisement required by this bill could conceivably be used by a criminal defendant to argue that proceedings in his or her case were invalid.

The advisement provided in this bill does not inform crime victims of all the rights to which they are entitled.

The legislative findings in this bill refer only to those rights of crime victims provided in the state constitution, but several of the rights in the advisement required by this bill are statutory rights. The findings also reference all of Art. I., s. 16, Fla. Const., even though only s. 16(b) specifies rights of crime victims. Section 16(a) refers to the rights of defendants.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

N/A

**VII. SIGNATURES:**

**COMMITTEE ON JUDICIAL OVERSIGHT:**

Prepared by:

Staff Director:

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David L. Jaroslav, J.D.

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Nathan L. Bond, J.D.

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<sup>17</sup> *Id.* at 269.